

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1191 OF 2004

Vilas Sarjerao Salunkhe

...Appellant

vs.

Sahebrao Parasharam Phadatare & Ors.

...Respondents

Mr.V.Z.Kankaria with Mr.Vinod Jadhav
Mr.S.A.Rajeshirke for Respondent Nos.1A, 1C, 2A, 2B, 2C, 2D
and 2F.

for the Appellant

CORAM: A.S.OKA,J.
DATE : MARCH 24, 2005.

P.C.:

1. Heard Shri Kankaria for the Appellant and Shri Rajeshirke

for the Respondents.

2. The Appeal is by the original defendant challenging the decree passed by the Appellate Court for removal of the encroachment. In the suit filed by the Respondents-original Plaintiffs, initially a Survey Officer came to be appointed as a Court Commissioner. He submitted a report and map at Exh.97. The Appellant submitted an application in the Trial Court making a grievance that the said Court Commissioner committed an error by measuring all the adjoining properties and in fact he should have measured only land bearing Gat No.717. On the basis of the said grievance, a superior Survey Officer of the Survey Department was appointed as a Court Commissioner. The Trial Court rejected the report and the map

of the first Court Commissioner on the ground that the superior Survey Officer was appointed as a Court Commissioner. The report of the superior Survey Officer was in variance with the report submitted by the original Court Commissioner and therefore the Trial Court dismissed the suit.

3. The Appellate Court recorded a finding that the superior Officer has subsequently measured only land bearing Gat No.717. The Appellate Court discussed the evidence on various aspects. The Appellate Court came to the conclusion that the report and the map prepared by the superior Officer of the Survey Department cannot be accepted. After recording the said finding the Appellate Court has passed a decree for removal of encroachment on the basis of the map drawn by the Court Commissioner at Exh.97.

4. The learned Counsel for the Appellant submitted that the Trial Court has given reasons for discarding the map at Exh.97. He submitted that there were errors in the calculations of the area. He submitted that if there was a variance between the two reports of the Court Commissioners, the suit should have been dismissed.

5. The Judgment of the Trial Court shows that after referring to the calculations of area in paragraph No.14, in paragraph No.15 the Trial Court referred to the report of the superior Officer of the Survey Department and held that the

measurements carried out by the original Court Commissioner were based on defective revenue record. Therefore, it was held that Exh.97 was not trustworthy.

6. When the first Court Commissioner carried out survey by measuring all the adjoining properties, the Appellant-Defendant found fault with the said survey only on the ground that only one land should have been measured. That is the how the second Court Commissioner came to be appointed. Apart from other reasons given by the Appellate Court, the fact that the second Court Commissioner did not measure adjoining properties was more than sufficient to discard the report of the second Court Commissioner.

7. The reasons given by the Appellate Court for discarding the report of the second Court Commissioner, in my view, are cogent. The Appellate Court has accepted the report of the Court Commissioner who was initially appointed and the map prepared by him shows that there is an encroachment. There is no reason to interfere with the said finding of fact recorded by the Appellate Court. In so far as the alleged error in the calculations of the area are concerned, in a Second Appeal the same cannot be gone into.

8. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE.